

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.606 [Amended]**

2. Section 73.606(b), the TV Table of Allotments under Nebraska, is amended by adding Channel 24+ at Albion.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1819 and 1852**

RIN 2700-AB52

**NASA Mentor-Protege Program Policies**

**AGENCY:** Office of Small and Disadvantaged Business Utilization (OSDBU), National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Final rule establishes NASA's policy on its Mentor-Protege Program. With respect to prime contractors, it defines eligibility for participation, allowable developmental assistance measures that will enhance the capabilities of Socially and Economically Disadvantaged Businesses to perform NASA contracts and subcontracts, and incentives for program participation. Further, it defines the transportability of subcontracting goal credit features from the Department of Defense (DOD) Mentor-Protege Program to NASA Contractors. However, the effectiveness of a mentor under the NASA Program will be evaluated by the measurable amount of developmental assistance provided under NASA contracts. Participation in the program is voluntary.

**EFFECTIVE DATE:** March 24, 1995.

**ADDRESSES:** NASA Office of Small and Disadvantaged Business Utilization, NASA Headquarters, (Code K), Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rae C. Martel, Telephone: (202) 358-2088.

**SUPPLEMENTARY INFORMATION:****Background**

NASA published a Proposed Rule on February 9, 1994 amending the NASA FAR Supplement to implement a Mentor-Protege Program. Having reviewed the public comments on the Proposed Rule, NASA is publishing this Final Rule with certain changes to the provisions set forth in the Proposed Rule. Many of the comments represented editorial recommendations or affirmations for the program. Also, a number of comments were duplicative on subject matter. However, the underlying Mentor-Protege policy has not been significantly altered as a result of changes made in response to comments. The most suggestive comments and their disposition are discussed in the preface of this Final Rule. This Final Rule serves as the regulatory basis for the Mentor-Protege Program provisions. For the pilot phase of the program, Mentor-Protege applications and activity are limited to cost-plus-award-fee contracts. The concept for the NASA Mentor-Protege Program includes the establishment of a Prime/Subcontractor relationship between the mentor and protege firm. In the role of subcontractor, the protege will contribute to the contract efforts; however, to enhance contractual performance, the protege will receive developmental assistance, as described in section 1819.7214, from the prime contractor mentor firm.

For consistency with Section 7105 of the Federal Acquisition Streamlining Act, Public Law 103-355, the categories of eligible entities defined in section 1819.7202 of the final rule include "Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions". Throughout this final rule, these categories are collectively identified by the term "protege".

NASA received two hundred and twenty-seven comments in response to the Proposed Rule. Several commenters suggested that NASA provide a definition of "high-tech." The agency high-tech definition is provided in 1819.7202 to provide clarity regarding the Mentor-Protege Program's targeted areas of contract activity. The Mentor-Protege Program, a key element of NASA's socioeconomic program, is designed to increase the participation of the entities defined as protege in the agency's core mission. Many commenters suggested that NASA modify the rule to allow reimbursement to primes for expenses incurred in providing developmental assistance to proteges. The coverage in the final rule

explains that expenses incurred by mentor firms in providing developmental assistance to their protege/subcontractors are allowable. The language in paragraph 1819.7205 states that the basic condition for Mentor-Protege requires a prime/subcontractor relationship between the mentor and protege. The costs will be recognized as part of enhancing contractor performance and are allowable consistent with the definitions and requirements in FAR Part 31. A large number of commenters requested that NASA provide clarity in the final rule regarding the fee arrangement and the earning of award fee. Future award fee plans of NASA contracts will be structured such that 15 percent of the available award fee is allocated for Small Disadvantaged Business Utilization. Mentor-Protege will be evaluated under Small Disadvantaged Utilization as a separate element and allocated a separate 5 percent of the 15 percent to evaluate the prime's performance in the Mentor-Protege Program. For purposes of earning award fee, the Mentor firm's performance will be evaluated against the measures described in the NASA FAR Supplement provisions at 1852.219-79. Many commenters recommended that while NASA explains the portability of credit features from the statute prescribing the DOD Mentor-Protege Program that are available to NASA prime contractors, no provision has been specifically made for credit against SDB goals with a multiplier similar to the DOD Mentor-Protege Program. A multiplier option is not included in Section 1819.7204 of the NASA program since no statute or legislation exists to authorize such an option. Section 1819.7204 includes only the features authorized in the statute creating the DOD program that can be extended to civilian agencies. A number of commenters commended NASA for including a provision allowing proteges to have multiple mentors. However, a number of commenters expressed concern about this provision. Some concerns centered about proteges with multiple mentors maintaining confidentiality; others were concerned with proteges receiving conflicting guidance from multiple mentors. It is recommended that Mentor-Protege agreements contain some certification regarding confidentiality and non-disclosure as is routinely utilized in business relationships. During the review of Letters of Intent and Agreements, NASA will scrutinize the intended areas of developmental assistance for duplication in certain

areas that could lead to conflicting guidance. However, some duplication may be unavoidable but appropriate and beneficial from successful large aerospace firms. Several prime contractors expressed concern with the requirement at Section 1819.7217 for quarterly reporting. In the final rule, the reporting frequency is changed from quarterly to semi-annual to parallel the Standard Form 294 submission. Several commenters suggested that NASA delete the provision encouraging proteges to submit reports because of privity of contract; others recommended that any report from a protege should be jointly prepared and submitted through the mentor. This provision remains unchanged in the final rule. The language in 1819.7217(b) reads that "proteges are encouraged to submit quarterly reports on program progress as it pertains to the Mentor-Protege agreement." While reporting is not mandatory for protege firms, a self evaluation of their progress under the terms of the approved agreement is desired by the NASA OSDBU. Since the Mentor-Protege agreement is approved by NASA, a review of progress against that approved agreement will not violate privity of contract. Several commenters suggested that NASA modify the rule to allow for flowing down program participation to lower tier, large business subcontractors where it makes sound financial sense. Because of privity of contract issues with the mentor prime contractors, no such provision will be included in the pilot phase of the Mentor-Protege Program. Several commenters suggested that NASA expand the program to include a provision allowing that a protege may be retained, and receive noncompetitive subcontract awards, until it has grown to more than twice the size of the SIC code. Such provision cannot be included without specific legislative authorization. Several commenters asked if a mentor could make noncompetitive awards to any protege subcontractor with whom it plans to work or is the mentor limited to noncompetitive awards to only those protege firms which the mentor is currently using under its DOD Mentor-Protege Program. NASA prime contractors, who are DOD mentors, are authorized to award subcontracts noncompetitively under their NASA contracts to the proteges which they are assisting under the DOD program in accordance with Public Law 101-510, Section 831(f)(2). In addition, NASA prime contractors who are also approved mentors under the NASA program may make noncompetitively

awards to protege firms identified in letters of intent and approved agreements for the NASA program. Several commenters recommend that NASA include additional mentor-provided developmental assistance features that will not be required to be paid back: property; rent-free use of facilities and/or equipment; and assignment of personnel to protege. Section 1819.7214 has been modified in the final rule to include these features. Several commenters asked if it is NASA's intent that the Mentor-Protege requirement may be included as part of the evaluation factors even though a prime contractor may not sign up to participate in the program. In all NASA solicitations for full and open competition, Small Disadvantaged Business Utilization is a stand-alone evaluation factor under Mission Suitability, which includes consideration for Mentor-Protege participation. While voluntary and better-suited for certain prime contractors, participation in the Mentor-Protege program may provide many primes the opportunity to substantially increase their subcontracting activity while also achieving other agency and program objectives as delineated in 1819.7207. All things being equal, the firm that proposes in compliance with the Government's subcontracting goals and includes Mentor-Protege activity will enhance its competitive position. Several commenters asked if a NASA prime who is currently a DOD mentor has to apply and be approved for the NASA Mentor-Protege Program. Any firm that seeks to participate in the NASA Mentor-Protege Program must apply to NASA, see Section 1819.7211(a). The discussion at 1819.7204 only highlights the portability of features from the DOD Mentor-Protege Program that extends to NASA prime contractors. This section does not address approved NASA mentors, only NASA contractors who are approved DOD Mentors. Several commenters sought clarity regarding measurement or definition of "good faith," which is what NASA mentors will be held to beyond transferring credit from activity in the DOD activity to NASA subcontracting plans. "Good faith" will be measured by the amount and quality of developmental assistance provided by mentors from the measures set forth at 1819.7214 and as described in the clause at 1852.219-79. A discussion of this activity should be included in the reports submitted by the mentor and in the protege's reports, if any. Several commenters suggested that NASA modify the rule so that Mentor-

Protege applications may be either contract-specific or broader for multiple-contract agreements. There is no change in the rule. Since the Mentor-Protege relationship involves a prime/subcontractor relationship, the application and activity must be contract-specific. Several commenters asked if awards to proteges on a noncompetitive basis under this program will be viewed as an adequate and acceptable justification for other than full and open competition. The requirement for full and open competition for subcontractors is a matter of regulatory policy, not statute. The Associate Administrator for Procurement is approving an exception to this policy for approved Mentor-Protege agreements. Several commenters state that with this voluntary program participation, NASA states that a 30-day notice should be provided by either party to withdraw. The commenters asked whether a decision to dissolve the relationship that occurs during a contract period would impact the amount of award fee available to the prime contractor. Notwithstanding the 30-day notice provision at 1819.7213(h), the requirement exists that agreements must contain a plan for accomplishing the work in progress should the agreement be terminated. The agreement, containing this plan, must be approved by NASA prior to implementing the developmental assistance program. Approval of the plan will ensure that the technical performance will continue satisfactorily and thereby eliminating the possibility for negative impact to the prime. The remaining major comments will be addressed individually as follows. One commenter stated that the application process indicates that the application is only for a particular contract which the contractor is currently performing. The commenter stated that this would appear to eliminate any Mentor-Protege arrangements which are part of a proposal. If a NASA prime is allowed to propose a Mentor-Protege arrangement as part of its proposal, the commenter stated that the evaluation criteria should be adjusted for scoring the protege's relevant experience and past performance for areas of work in which they are to be mentored. The prime should not be penalized for inclusion of a less-experienced protege. The application process is intended to recognize both instances—Mentor-Protege under a particular contract currently being performed and proposals including Mentor-Protege arrangements. In response to a competitive cost-plus-award-fee

procurement, the contractor's proposal will be submitted in accordance with the evaluation methodology and instructions set forth in the solicitation. However, prior to proposal submission the letter of intent and the agreement should be submitted to the OSDBU for approval. The letter of intent and OSDBU approved agreement should be submitted as part of the proposal. In competitive proposals that include a Mentor-Protege arrangement, no adjustment will be made for scoring the protege's relevant experience and past performance since the protege's record should demonstrate ability to perform the subcontracting job outlined for a such a firm. The protege's performance in non-traditional areas is essentially guaranteed by the prime's commitment to successfully mentor said firm to perform. In these instances, the proposal should reflect details of the Mentor-Protege relationship as related to performance under the proposed contract to provide an understanding of the work plan relationship and to facilitate a complete evaluation and scoring. This commitment and performance by mentors form the basis for earning the associated fee dollars. One commenter requests clarity regarding the disposition of reports to be submitted by the NASA technical program manager. They also seek clarity regarding the roles and interactions of the NASA Mentor-Protege program manager, the NASA technical program manager, and the contracting officer in the award fee determination process. The NASA Mentor-Protege program manager, a senior official in the NASA Headquarters Office of Small and Disadvantaged Business Utilization, has direct authority for the program and is the designated recipient for all required reports. The NASA Mentor-Protege program manager will submit quarterly reports to the contracting officer for use in the semi-annual award fee determinations as a result of monitoring activity and work site reviews. The contracting officer is the responsible NASA official with direct authority for the contract. The NASA technical program manager, provides technical direction and as such also provides quarterly evaluations of the contractor's technical performance for the purpose of semi-annual fee determinations. Therefore, the program manager will also include in the quarterly reports an assessment of the contractor's performance in the Mentor-Protege Program as it pertains to the technical effort and protege development. One commenter stated that considering NASA's current high SDB percentage

goals included in solicitations, expecting a prime to exceed these already high SDB percentages is unrealistic. Further, the contractor states that if incentive eligibility is based upon a prime exceeding the NASA 8 percent goal (irrespective of a contract's SDB goal), then a prime would consider program participation as a level of risk. Mentor-Protege is independent of establishment of SDB subcontracting goals in specific contracts. The 8 percent goal is an agency goal; each procurement includes an SDB goal that represents the maximum practical opportunity as required by public law. The Mentor-Protege program represents only one means of increasing SDB participation—with emphasis on high tech effort. Program success will be determined by the measures cited at 1819.7207. Since the Mentor-Protege relationship will be contract-specific, the contractor's performance will be measured against negotiated goals, the Mentor-Protege agreement, and the other factors cited in 1819.7206. A commenter recommended that NASA delete provisions at 1819.7213 (b) and (c), suggesting that there is no privity of contract, and substitute them with a provision allowing for after-the-fact notification. No change is made to these subsections. The NASA position is that advance notification along with a work plan for continuation of work does not affect privity of contract. One commenter recommended modification in the final rule such that annual briefings of the Mentor-Protege Program success should be presented as part of the mentor's normal program review with the NASA Center it supports. The NASA OSDBU would be invited to participation at the center; the pertinent protege could, at the mentor's discretion, be invited to make their own presentation. Rationale: Mentor-Protege reviews held as part of a center's normally-scheduled program review would significantly reduce cost to NASA and contractors thereby maintaining privity between the mentor and the protege. Section 1819.7218 of the Final Rule has been changed to include such review in program reviews. Where applicable, separate reviews will be scheduled for other contracts at the NASA work site. One commenter recommends that NASA provide the mentor (formally or informally) with information on any deficiencies noted in the application so that the deficiencies can be quickly corrected, if the Mentor so chooses. If the Mentor does not correct the deficiencies within a reasonable time unilaterally established by NASA, then

the application should be denied, and the whole process would start over. A commenter suggested that NASA limit application information to two prior years and that NASA specify the minimum information for letter of intent. The final rule incorporates both recommended changes in section 1819.7211. A commenter suggested that since the proposed rule making does not take into account a prior business relationship between the mentor and protege, some restrictions should be included to prevent overlapping management (e.g. Board of Directors) and business arrangements such as partnerships in which the Mentor has a direct financial interest in the business success of the protege or can take credit for developmental assistance which would be a part of normal business development for the mentor. Proposed Mentor-Protege agreements will be disapproved where the protege firm's owner was a former employee of the proposed mentor or when the protege firm itself represents an entity in which the mentor firm holds a financial interest or ownership. However, mentor firms that hold partial ownership (up to 10%) of a proposed protege firm due to their approved participation in the DOD Mentor-Protege Program shall not negatively impact participation in the NASA program.

#### **Availability of NASA FAR Supplement**

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, Chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-0000-1. It is not distributed to the public, whether in whole or in part, directly by NASA.

#### **Impact**

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Mentor-Protege Program is intended to have a positive economic effect on small businesses by enhancing their ability to participate in both Government and commercial contracting entities.

**List of Subjects in 48 CFR Parts 1819 and 1852**

Government procurement.

**Deidre A. Lee,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1819 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1819 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

**PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

2. Subpart 1819.72 is added to read as follows:

**Subpart 1819.72—The NASA Mentor-Protege Program**

- 1819.7201 Scope of subpart.
- 1819.7202 Definitions.
- 1819.7203 Non-affiliation.
- 1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protege Program to NASA contractors.
- 1819.7205 General policy.
- 1819.7206 Incentives for prime contractor participation.
- 1819.7207 Measurement of program success.
- 1819.7208 Mentor firms.
- 1819.7209 Protege firms.
- 1819.7210 Selection of protege firms.
- 1819.7211 Application process for mentor firms to participate in the program. §
- 1819.7212 OSDBU review and approval process of agreement.
- 1819.7213 Agreement contents.
- 1819.7214 Developmental assistance.
- 1819.7215 Obligation.
- 1819.7216 Internal controls.
- 1819.7217 Reports.
- 1819.7218 Program review.
- 1819.7219 Solicitation provision and contract clauses.

**Subpart 1819.72—The NASA Mentor-Protege Program****1819.7201 Scope of subpart.**

The NASA Mentor-Protege Program is designed to incentivize NASA prime contractors to assist Small Disadvantaged Business concerns, Historically Black Colleges and Universities, and Minority Institutions in enhancing their capabilities to perform NASA contracts and subcontracts, foster the establishment of long-term business relationships between these entities and NASA prime contractors, and increase the overall number of these entities that receive NASA contract and subcontract awards.

**1819.7202 Definitions.**

(a) *Historically Black Colleges and Universities (HBCU)*, as used in this subpart, means institutions determined

by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein. HBCUs include any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

(b) *Minority Institutions (MI)*, as used in this subpart, means institutions verified by the Secretary of Education to meet the criteria set forth in 34 CFR 637.4. MIs include Hispanic-serving institutions as defined by 20 U.S.C. 1059c(b)(1).

(c) *Small Disadvantaged Business concern (SDB)*, as used in this subpart, means small business concerns owned and controlled by socially and economically disadvantaged individuals (as those terms are used in section 8(a) of the Small Business Act (15 U.S.C. 637(a) (5) and (6))) and small business concerns owned and controlled by women (see section 8(d) of the Small Business Act (15 U.S.C. 637(d)) as amended by Public Law 103-355.

(d) *High-Tech*: As used in this subpart, means research and/or development efforts that are within or advances the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

**1819.7203 Non-affiliation.**

For purposes of the Small Business Act, a protege firm may not be considered an affiliate of a mentor firm solely on the basis that the protege firm is receiving developmental assistance referred to in 1819.7214 from such mentor firm under the program. Neither shall partial ownership, up to 10 percent of a Department of Defense (DOD) sanctioned Protege firm by its DOD mentor constitute affiliation by NASA.

**1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protege Program to NASA contractors.**

(a) In accordance with the benefits authorized by the DOD Mentor-Protege program (Public Law 101-510, Section 831, as amended by Public Law 102-190, Section 814), a NASA contractor who is also an approved DOD Mentor can transfer credit features to their NASA contracts.

(b) NASA prime contractors, who are approved DOD mentors, can award subcontracts noncompetitively under their NASA contracts to the proteges which they are assisting under the DOD program (Public Law 101-510, Section 831(f)(2)).

(c) NASA prime contractors may count the costs of developmental

assistance provided to proteges being assisted under the DOD program toward meeting the goals in their subcontracting plans under their NASA prime contracts (Public Law 102-190, Section 814). Limitations which may reduce the value of this benefit include:

(1) Credit toward attaining subcontracting goals is available only to the extent that the developmental assistance costs have not been reimbursed to the contractor by DOD as direct or indirect costs; or

(2) The credit is available to meet the goals of a NASA subcontracting plan only to the extent that it has not been applied to a DOD subcontracting plan. The same unreimbursed developmental assistance costs cannot be counted toward meeting the subcontracting goals of more than one prime contract. These costs would accrue from credit for the multiples attributed to assistance provided by Small Business Development Centers, Historically Black Colleges and Universities and Minority Educational Institutions.

(d) The features identified in paragraphs (a), (b) and (c) of this section point out the portability of features from the DOD Mentor Protege Program to NASA prime contractors. NASA mentors will be held to show "good faith" by providing actual developmental assistance beyond transferring credit from activity in the DOD program to NASA subcontracting plans.

**1819.7205 General policy.**

(a) Eligible large business prime contractors, not included on the "Parties Excluded from Procurement Program" list, who have at least one active subcontracting plan, and who are approved as mentor firms will enter into agreements with eligible entities as defined in 1819.7202 as Proteges to provide appropriate developmental assistance to enhance the capabilities of Proteges to perform as subcontractors and suppliers. Eligible small business prime contractors, not included on the "Parties Excluded from Procurement Programs" list, and that are capable of providing developmental assistance to SDB's, may be approved as mentors. An active mentor-protege arrangement requires the protege to be a subcontractor under the mentor's prime contract with NASA.

(b) The pilot program has a duration of three years commencing from March 24, 1995. During this period, eligible mentor firms, which have received approval by NASA to participate in the program pursuant to section 1819.7212, may enter into agreements with protege firms.

(c) For the pilot phase of the program, mentor-protege activity will be limited to cost-plus-award-fee contracts.

(d) Costs incurred by a mentor to provide developmental assistance, technical or managerial assistance described in section 1819.7214, are allowable.

**1819.7206 Incentives for prime contractor participation.**

(a) During source selection, Mentor-Protege will be evaluated under SDB Utilization which is a stand-alone evaluation subfactor under the Mission Suitability.

(b) Under cost-plus-award fee contracts, approved mentor firms shall be eligible to earn award fee associated with their performance as a mentor by performance evaluation period. The award fee plans of all NASA contracts are structured such that 15 percent of the available award fee is allocated for Small Disadvantaged Business Utilization. Mentor-Protege performance will be evaluated under Small Disadvantaged Business Utilization as a separate element and allocated a separate 5 percent of the 15 percent award fee. For purposes of earning award fee, the Mentor firm's performance shall be evaluated to determine the degree to which the participation went beyond (exceeded) the negotiated SDB goals commitment. Specifically, the Mentor firm's performance will be evaluated against the criteria described in the NASA FAR Supplement provision at 1852.219-79.

**1819.7207 Measurement of program success.**

The overall success of the NASA Mentor-Protege program encompassing all participating Mentors and proteges will be measured by the extent to which it results in:

(a) An increase in the number, dollar value and percentage of subcontracts awarded to proteges by mentor firms under NASA contracts since the date of entry into the program;

(b) An increase in the number and dollar value of contract and subcontract awards to protege firms since the time of their entry into the program (under NASA contracts, contracts awarded by other Federal agencies and under commercial contracts);

(c) An increase in the number and dollar value of subcontracts awarded to a protege firm by its mentor firm; and

(d) An increase in subcontracting with protege firms in industry categories where they have not traditionally participated within the mentor firm's activity.

**1819.7208 Mentor firms.**

(a) *Eligibility.*

(1) Contractors eligible for receipt of government contracts;

(2) Large prime contractors performing under contracts with at least one negotiated subcontracting plan as required by 48 CFR (FAR) 19.7; and

(3) Small Business prime contractors that can provide developmental assistance to enhance the capabilities of proteges to perform as subcontractors and suppliers. A small business prime contractor performing under a NASA contract that does not contain a negotiated subcontracting plan may apply.

(b) Mentors will be encouraged to identify and select:

(1) A broad base of firms including those defined as emerging firms (e.g., a protege whose size is no greater than 50 percent of the size standard applicable to the SIC code assigned to a contracting opportunity); and

(2) Proteges *in addition* to firms with whom they have established business relationships.

(3) High-Tech firms as proteges.

**1819.7209 Protege firms.**

(a) For selection as a protege, a firm must be:

(1) An SDB, HBCU or MI as those terms are defined in 1891.7202;

(2) Certified as small in the SIC code for the services or supplies to be provided by the protege under its subcontract to the mentor; and

(3) Eligible for receipt of government contracts.

(b) A protege firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentor may rely in good faith on written representations by potential proteges that they meet the specified eligibility requirements.

(c) Proteges may have multiple mentors. Proteges participating in mentor-protege programs in addition to the NASA program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

**1819.7210 Selection of protege firms.**

(a) Mentor firms will be solely responsible for selecting protege firms. The mentor is encouraged to identify and select the types of protege firms listed in 1819.7208(b).

(b) Mentor firms may have more than one protege.

(c) The selection of protege firms by mentor firms may not be protested, except as in paragraph (d) of this section.

(d) Any protest regarding the size or eligibility status of an entity selected by

a mentor to be a protege shall be referred solely to the Associate Administrator, Office of Small and Disadvantaged Business Utilization (OSDBU), NASA for resolution. In its discretion, NASA may seek an advisory opinion from the Small Business Administration.

**1819.7211 Application process for mentor firms to participate in the program.**

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) Certification that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of NASA field center where support is provided;

(3) The number of proposed Mentor-Protege arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar amount of subcontracts awarded under NASA prime contracts within the past 2 years and the number of dollar value of such subcontracts awarded to entities defined as proteges.

(6) Information on the proposed types of developmental assistance. For each proposed Mentor-Protege relationship include information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities for the protege firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to

enter into a mentor-protege agreement under the NASA program, that they intend to cooperate in the developmental of a suitable development assistance program to meet their respective needs, and that they agree to comply with the obligations in section 1819.7215 and all other provisions governing the program.

**1819.7212 OSDBU review and approval process of agreement.**

(a) The information specified in 1819.7211(b) is reviewed by NASA OSDBU. The review by the NASA OSDBU will be completed no later than 30 days after receipt by the OSDBU. NASA OSDBU will provide a copy of the submitted information to the cognizant NASA technical program manager and contracting officer for a parallel review and concurrence.

(b) If OSDBU approves the application, then the mentor

(1) Negotiates agreement with the protege; and

(2) Submits an original and two (2) copies of the agreement to NASA OSDBU for approval by the NASA Mentor-Protege program manager, the NASA technical program manager and the contracting officer.

(c) Upon agreement approval, the mentor may implement developmental assistance program.

(d) An approved agreement will be incorporated into the mentor's contract with NASA. It should be added to the subcontracting plan in contracts which contain such a plan.

(e) If OSDBU disapproves the application, then the mentor may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU. Upon finding deficiencies that NASA considers correctable, the OSDBU will notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

**1819.7213 Agreement contents.**

The contents of the agreement must contain:

(a) Names and addresses of mentor and protege firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protege firm, OSDBU and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program;

(c) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's

intent to voluntarily terminate the mentor-protege agreement. The mentor shall notify the OSDBU and the contracting officer immediately upon receipt of such notice from the protege;

(d) A description of the type of developmental program that will be provided by the mentor firm to the protege firm, to include a description of the subcontract work, and a schedule for providing assistance and criteria for evaluation of the protege's developmental success;

(e) A listing of the number and types of subcontracts to be awarded to the protege firm;

(f) Program participation term;

(g) Termination procedures;

(h) Plan for accomplishing work should the agreement be terminated; and

(i) Other terms and conditions, as appropriate.

**1819.7214 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protege include:

(a) Management guidance relating to—

(1) Financial management,

(2) Organizational management,

(3) Overall business management/ planning and

(4) Business development;

(b) Engineering and other technical assistance;

(c) Noncompetitive award of subcontracts under NASA contracts;

(d) Progress payments based on costs.

The customary progress payment rate for all NASA contracts with small disadvantaged businesses is 95 percent. This customary progress payment rate for small disadvantaged businesses may be used by prime contractors;

(e) Advance payments. While a mentor can make advance payments to its proteges who are performing as subcontractors, the mentor will only be reimbursed by NASA for these costs if advance payments have been authorized in accordance with statute and regulation;

(f) Loans;

(g) Rent-free use of facilities and/or equipment;

(h) Property; and

(i) Temporary assignment of personnel to protege for purpose of training

**1819.7215 Obligation.**

(a) Mentor or protege may voluntarily withdraw from the program as mutually agreed by both mentor and protege.

(b) Mentor and protege firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of

the pilot program period or the conclusion of their effort, whichever comes first.

**1819.7216 Internal controls.**

(a) The NASA OSDBU will manage the program. Internal controls will be established by NASA OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor applications for realism, validity and accuracy of provided information;

(2) Reviewing semi-annual progress reports submitted by mentors and proteges, if any, on protege development to measure protege progress against the master plan contained in the approved agreement.

(3) Site visits to NASA installation where Mentor-Protege activity is on-going.

(b) NASA may terminate Mentor-Protege agreements if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA will terminate an agreement or exclude a particular entity by sending a written notice to the affected party specifying the action being taken and the effective date of that action. Termination of an agreement does not constitute a termination of the subcontract between the Mentor and the Protege. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement, as required in 1819.7213(h).

**1819.7217 Reports.**

(a) Semi-annual reports shall be submitted by the mentor to the NASA mentor-protege program manager, NASA Headquarters OSDBU, to include information as outlined in 1819.7206(b).

(b) Proteges are encouraged to submit semi-annual reports, to the NASA mentor-protege program manager, on program progress as pertains to their mentor-protege agreement. However, costs associated with the preparation of these reports will not be reimbursed by the Government.

(c) The NASA technical program manager shall include an assessment of the Prime Contractor's (Mentor's) performance in the Mentor-Protege program in his quarterly 'Strengths and Weaknesses' evaluation report. A copy of these comments, as pertains to the technical effort and protege development, will be provided to NASA Headquarters OSDBU and the Contracting Officer.

(d) The NASA mentor-protege program manager will submit semi-

annual reports to the cognizant contracting officer regarding participating prime contractor's performance in the program for use in the award fee determination process.

#### 1819.7218 Program review.

At the conclusion of each year in the mentor-protege program, the prime contractor and protege, as appropriate, will formally brief the NASA mentor-protege program manager, the technical program manager and the contracting officer regarding program accomplishments as pertains to the approved agreement. This review will be incorporated into the normal program review, where applicable. A separate review will be scheduled for other contracts to be held at the NASA work site location.

#### 1819.7219 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219-77, NASA Mentor-Protege Program, in all solicitations and contracts with subcontracting plans or in the case of small business set-asides exceeding \$500,000 (\$1,000,000 for construction) that offer subcontracting opportunities.

(b) The contracting officer shall insert the provision at 1852.219-78, Evaluation of Prime Contractor Participation in the Mentor-Protege Program, in all solicitations containing the provisions at 1852.219-77, NASA Mentor-Protege Program and FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(c) The contracting officer shall insert the clause at 1852.219-79, Mentor Responsibility and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protege Program.

#### PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

a. Sections 1852.219-77, 1852.219-78, and 1852.219-79 are added to read as follows:

##### 1852.219-77 NASA Mentor-Protege Program.

As prescribed in 1819.7219(a), insert the following provision:

##### NASA Mentor Protege Program (Jan. 1994)

(a) Prime contractors, including certain small businesses, are encouraged to participate in the NASA pilot mentor-protege program for the purpose of providing developmental assistance to eligible protege entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The pilot program consists of:

(1) Mentor firms, which are large prime contractors with at least one active subcontracting plan or eligible small businesses;

(2) Protege, which are subcontracting under the prime contractor, include Small Disadvantaged Business (SDB) concerns including women-owned small businesses, Historically Black Colleges and Universities, and Minority Institutions, as those terms are defined in NASA FAR Supplement 1819.7202.

(3) Mentor-protege agreements, approved by the NASA Office of Small and Disadvantaged Business Utilization (OSDBU);

(4) Potential of payment of additional award fee for voluntary participation and successful performance in the mentor-protege program.

(c) Mentor participation in the program, described in 48 CFR 1819.72, means providing technical, managerial and financial assistance to aid proteges in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the pilot program are encouraged to contact the NASA OSDBU, Washington, DC 20546, (202) 358-2088, for further information. (End of clause)

##### 1852.219-78 Evaluation of Prime Contractor Participation in the NASA Mentor Protege Program.

As prescribed in 1819.7219(b), insert the following provision:

##### Evaluation of Prime Contractor Participation in the NASA Mentor-Protege Program (DEC 1994)

NASA will consider (evaluate) the proposed participation and extent of developmental assistance to be provided by a prime contractor to protege firms as an approved Mentor in the NASA Mentor-Protege Program under the SDB Utilization subfactor under Mission Suitability.

##### 1852.219-79 Mentor Requirements and evaluation.

As prescribed in 1819-7219(c), insert the following provision:

##### Mentor Requirements and Evaluation (DEC 1994)

(a) The purpose of the NASA Mentor-Protege Program (s) is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as proteges. Eligible proteges include Small Disadvantaged Business concerns including women-owned small businesses, Historically Black Colleges and Universities, and Minority Institutions, as those terms are defined in NASA FAR Supplement 1819.7202.

(b) NASA will evaluate the contractor's performance through the Performance Evaluation process. The evaluation will consider the following:

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of proteges as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protege as defined in the agreement;

(3) To what extent the Protege has met the developmental objectives in the agreement; and

(4) To what extent the firm's participation in the Mentor-Protege Program resulted in the Protege receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the Mentor.

(c) Semi-annual reports shall be submitted by the mentor to the NASA mentor-protege program manager, NASA Headquarters OSDBU to include information as outlined in 1819.7206(b).

(d) The Mentor will notify the OSDBU and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program or upon receipt of a Protege's notice to withdraw from the Program;

(e) Mentor and protege firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of the pilot program period or the conclusion of their effort which ever comes first. At the conclusion of each year in the mentor-protege program, the prime contractor and protege, as appropriate, will formally brief the NASA mentor-protege program manager, the technical program manager, and the contracting officer during a formal program review regarding program accomplishments as pertains to the approved agreement.

(f) NASA may terminate Mentor-Protege agreements and exclude Mentor or Protege firms from participating in the NASA program if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protege. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in 1819.7213(h). (End of clause)

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#### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

#### 49 CFR Part 501

#### Organization and Delegation of Powers and Duties

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), (DOT).  
**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations on the organization of and delegations of powers and duties within